

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DR. LYDIE HAZAN,

Plaintiff,

v.

LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT, a Political  
Subdivision of the STATE OF  
NEVADA; Police Officer  
OLIVER(LVMPD #4540) individually  
and as a Police Officer; employed by  
the LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT; POLICE  
OFFICER JOHN DOES I-XX; and  
JOHN DOES I-XX, inclusive,

Defendants.

Case No. 2:12-cv-00917-LDG (PAL)

**ORDER**

Plaintiff Dr. Lydie Hazan brought the instant action pursuant to 42 U.S.C. § 1983 and supplemental state law claims against Defendants Las Vegas Metropolitan Police Department ("LVMPD") and Officer Ernest Oliver, individually and as a Police Officer employed by LVMPD. Defendants moved for summary judgment (#23), and then filed an amended motion for summary judgment (#29) asserting qualified immunity and lack of evidence. Plaintiff moves for summary judgment (#34). For the following reasons, the Court

1 grants Defendant's amended summary judgment motion (#29) on all counts and denies  
2 Plaintiff's summary judgment motion (#34) on all counts.

3 The Court also notes that the plaintiff filed pro se requests (## 48, 49) for additional  
4 time to obtain new counsel. New counsel subsequently appeared on behalf of plaintiff.  
5 The Court will deny the requests as moot.

6 **Motion for Summary Judgment**

7 In considering a motion for summary judgment, the court performs "the threshold  
8 inquiry of determining whether there is the need for a trial—whether, in other words, there  
9 are any genuine factual issues that properly can be resolved only by a finder of fact  
10 because they may reasonably be resolved in favor of either party." *Anderson v. Liberty*  
11 *Lobby, Inc.*, 477 U.S. 242, 250 (1986). To succeed on a motion for summary judgment,  
12 the moving party must show (1) the lack of a genuine issue of any material fact, and (2)  
13 that the court may grant judgment as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex*  
14 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

15 A material fact is one required to prove a basic element of a claim. *Anderson*, 477  
16 U.S. at 248. The failure to show a fact essential to one element, however, "necessarily  
17 renders all other facts immaterial." *Celotex*, 477 U.S. at 323.

18 "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after  
19 adequate time for discovery and upon motion, against a party who fails to make a showing  
20 sufficient to establish the existence of an element essential to that party's case, and on  
21 which that party will bear the burden of proof at trial." *Id.* "Of course, a party seeking  
22 summary judgment always bears the initial responsibility of informing the district court of  
23 the basis for its motion, and identifying those portions of 'the pleadings, depositions,  
24 answers to interrogatories, and admissions on file, together with the affidavits, if any,' which  
25 it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S.  
26 at 323. As such, when the non-moving party bears the initial burden of proving, at trial, the



1           A. 42 U.S.C. § 1983 - Individual Claims

2           The Plaintiff asserts a 42 U.S.C. § 1983 claim for violations of Dr. Hazan's 4<sup>th</sup> and  
3 14<sup>th</sup> amendment rights for unlawful arrest and excessive force. A § 1983 claim for unlawful  
4 arrest and excessive force is properly analyzed under an "objective reasonableness"  
5 standard under the 4<sup>th</sup> amendment, rather than the substantive due process standard under  
6 the 14<sup>th</sup> amendment. *Graham v. Connor*, 490 U.S. 386, 387 (1989). Furthermore, a § 1983  
7 claim against an individual requires proving an official, acting personally under color of state  
8 law, caused a deprivation of a federal right. See *Kentucky v. Graham*, 473 U.S. 159, 165  
9 (1985). A person deprives another "of a constitutional right, within the meaning of section  
10 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to  
11 perform an act which he is legally required to do that causes the deprivation of which the  
12 plaintiff complains." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (*quoting Johnson v.*  
13 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

14           However, liability will only attach in an individual capacity suit if the plaintiff pierces  
15 the officer's qualified immunity. See *Anderson v. Creighton*, 483 U.S. 637, 638 (1987). If an  
16 officer makes a reasonable mistake as to what the law requires, the officer is entitled to  
17 immunity. See *Saucier v. Katz*, 533 U.S. 194, 201-02 (2001). Because qualified immunity is  
18 an affirmative defense from suit, not merely from liability, "[u]nless the plaintiff's allegations  
19 state a claim of violation of clearly established law, a defendant pleading qualified immunity  
20 is entitled to dismissal before the commencement of discovery." *Doe v. Petaluma City*  
21 *School Dist.*, 54 F.3d 1447, 1450 (9<sup>th</sup> Cir. 1995) (*quoting Mitchell v. Forsyth*, 472 U.S. 511,  
22 526, (1985)). Additionally, Plaintiff has the burden of demonstrating the officer's conduct  
23 violated well established law. *Doe v. Petaluma City School Dist.*, 54 F.3d 1447, 1450 (9th  
24 Cir. 1995). Police officers are immune from suit if probable cause existed for an arrest.  
25 Probable cause is satisfied when, at the time of the seizure, the facts and circumstances  
26 within the officers' knowledge and of which they have reasonably trustworthy information

1 are sufficient to warrant a prudent person to believe that the suspect had committed or was  
2 committing an offense. See *Beck v. Ohio*, 379 U.S. 89 (1964).

3 The inquiry into whether Officer Oliver violated §1983 requires the Court to  
4 determine if the Defendant provided evidence sufficient to raise a genuine issue of material  
5 fact as to whether Officer Oliver had probable cause to arrest the Plaintiff. In the absence of  
6 probable cause, the Plaintiff would have a clearly established right to be free from arrest  
7 under her 4<sup>th</sup> amendment rights. See generally *Morgan v. Woessner*, 997 F.2d 1244 (9th  
8 Cir. 1993). Conversely, if the Plaintiff fails to demonstrate Officer Oliver's conduct violated  
9 well established law, the Court must find that Officer Oliver is entitled to qualified immunity.

10 Plaintiff alleges in her reply to Defendant's summary judgment motion (#32) and  
11 summary judgment motion (#34) that her conduct in the airport was not in violation of Clark  
12 County Code 20.04.070(a). (Clark County Code 20.04.070(a) states no person shall use  
13 abusive, insulting, obscene, loud, boisterous or indecent language, obstruct or render  
14 dangerous any drive, path, walk or public place upon the airport.) However, Plaintiff's  
15 testimony contradicts the assertion that she was not in violation of Code 20.04.070(a).  
16 Plaintiff admits to being "loud" and "frustrated" amidst a crowd gathered in front of a service  
17 desk at the airport. (Ex. A, p. 24, 9-12).

18 Additionally, the testimonies of Officer Oliver, Donna Hall (a Delta Global Services  
19 representative), Arlene Avanzado (a Spirit Airlines Customer Service Supervisor), and  
20 Jennifer Gordon provide evidence of probable cause sufficient to cause Officer Oliver to  
21 arrest the Plaintiff. Plaintiff continued to act in a loud and boisterous manner despite  
22 multiple warnings from Officer Oliver. (Ex. B, p. 23, 3-23). Officer Oliver stated that the  
23 conduct of the Plaintiff was sufficient probable cause to arrest her. (Ex. B, p. 60-62). Ms.  
24 Hall corroborated Officer Oliver's testimony, stating the Plaintiff used profanity (Ex. D, p. 20-  
25 21) and that her volume level was between an eight and a ten on a scale from one-to-ten.  
26 *Id.* Ms. Avanzado provided similar testimony regarding Plaintiff's conduct. (Ex. E, p. 38)

1 (stating Plaintiff failed to comply with requests to lower her voice). Ms. Gordon witnessed  
2 the incident and stated that the Plaintiff was noticeably loud for a period of over ten  
3 minutes, despite warnings to adjust her behavior by the officers . (Ex. F, p. 18-21). The  
4 testimony of the witnesses provides the Court with ample evidence indicating Officer Oliver  
5 had probable cause to arrest the Plaintiff.

6 The testimonies of Officer Oliver and additional witnesses provide a basis for this  
7 Court to determine that Officer Oliver had probable cause to arrest the Plaintiff. The Court  
8 finds Officer Oliver's probable cause to arrest the Plaintiff grants him immunity from suit.  
9 Therefore, the Court will not consider the § 1983 claim against Officer Oliver. Additionally,  
10 the Court will not consider the Plaintiff's summary judgment motion regarding this claim  
11 because it is moot. The Court grants summary judgment for the Defendants on the § 1983  
12 claim for unlawful arrest and excessive force.

### 13 B. Battery

14 The Plaintiff alleges battery against Officer Oliver, stating that Officer Oliver used  
15 more force than necessary while arresting the Plaintiff. The Plaintiff's allegation is based on  
16 Officer Oliver tapping the Plaintiff to announce his presence, grabbing and twisting her arm  
17 while handcuffing her, and pushing her against the podium. The Defendant contests the  
18 battery claim as lacking evidence and subsumed by the § 1983 claim against Officer Oliver.

19 A battery occurs where a defendant makes an intentional, *unlawful*, and harmful  
20 contact with a plaintiff. *Ashcraft v. King*, 228 Cal.App.3d 604, 278 Cal.Rptr.900 (1991)  
21 (*emphasis added*). However, police officers are allowed to use force which appears  
22 reasonably necessary, when viewed in the totality of the circumstances. *Ramirez v. City of*  
23 *Reno*, 925 F. Supp. 681, 690 (D. Nev. 1996) (citing *Graham*, 490 U.S. 386 (1989); *Scott v.*  
24 *Heinrich*, 39 F.3d 912, 914 (9th Cir. 1994)). However, when police officers use more force  
25 than is necessary, they are liable for battery. *Id.* This reasonableness requirement "must  
26 embody allowance for the fact that police officers are often forced to make split-second

1 judgments — in circumstances that are tense, uncertain, and rapidly evolving – about the  
2 amount of force that is necessary in a particular situation.” *Graham*, 490 U.S. 386 (1989).

3 The Court previously determined that the Plaintiff did not supply sufficient evidence  
4 to pierce Officer Oliver’s qualified immunity. The Court’s determination indicates that Officer  
5 Oliver exercised proper discretion while arresting the Plaintiff, and did not act in an unlawful  
6 manner. Therefore, the Court grants summary judgment for the Defendants on the battery  
7 claim.

8 C. Intentional Infliction of Emotional Distress

9 The Plaintiff alleges intentional infliction of emotional distress against Officer Oliver  
10 for his actions while arresting the Plaintiff.

11 Under Nevada law, the elements of this cause of action are (1) extreme and  
12 outrageous conduct with either the intention of, or reckless disregard for, causing emotional  
13 distress, (2) the plaintiff’s having suffered severe or extreme emotional distress, and (3)  
14 actual or proximate causation. *Star v. Rebello*, 97 Nev. 124, 625 P.2d 90, 91-2 (Nev. 1981).

15 The Court’s determination of Officer Oliver’s probable cause to arrest the Plaintiff,  
16 and subsequent qualified immunity, leads the Court to find that Officer Oliver’s conduct was  
17 not “extreme and outrageous” under the circumstances. Therefore, the Court grants  
18 summary judgment for the Defendants on the intentional infliction of emotional distress  
19 claim.

20 D. Negligent Infliction of Emotional Distress

21 The Plaintiff alleges negligent infliction of emotional distress against Officer Oliver for  
22 his actions while arresting the Plaintiff.

23 Nevada law immunizes defendants from a lawsuit for injuries “[b]ased upon the  
24 exercise or performance or the failure to exercise or perform a discretionary function or duty  
25 on the part of the state or any of its agencies or political subdivisions or any officer or  
26 employee of any of these, whether or not the discretion involved is abused.” N.R.S.

1 41.032(2). This immunity attaches when there is probable cause for an arrest. The Nevada  
 2 Supreme Court has recognized that the decision to make an arrest is a discretionary  
 3 function under N.R.S. 41.032. *Coty v. Washoe County*, 108 Nev. 757, 839 P.2d 97 (1992).

4 Therefore, the Court finds that Officer Oliver is immune from a cause of action for  
 5 negligent infliction of emotional distress, and grants summary judgment for the Defendant  
 6 on the negligent infliction of emotional distress claim.

#### 7 E. False Arrest and False Imprisonment

8 Having determined that the Plaintiff failed to show an absence of probable cause for  
 9 arrest, the Court grants summary judgment for the Defendants on the false arrest and false  
 10 imprisonment claim.

### 11 **II. Claims against LVMPD**

12 Plaintiff raises three claims against LVMPD, namely, a § 1983 municipal liability  
 13 claim; negligent hiring, retention, training, and supervision; and *respondeat superior*.

#### 14 A. 42 U.S.C. § 1983 - Municipal Liability

15 To state a claim under § 1983 for municipal liability, a plaintiff must allege a  
 16 constitutional tort was inflicted in the execution of the entity's policy or custom. *Monell v.*  
 17 *Dept. of Soc. Servs.*, 436 U.S. 658, 690-91, (1978). A plaintiff may establish § 1983  
 18 municipal liability by "prov[ing] that a city employee committed the alleged constitutional  
 19 violation pursuant to a formal governmental policy or a 'longstanding practice or custom  
 20 which constitutes the "standard operating procedure" of a local governmental entity.'" *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992) (citing *Jett v. Dallas Indep. Sch.*  
 21 *Dist.*, 491 U.S. 701, 737 (1989). These requirements are established only with "significant  
 22 evidence" to show that a policy existed specifically authorizing or condoning the alleged  
 23 practice. See *Davis v. City of Ellensburg*, 869 F.2d 1230, 1234 (9th Cir. 1989).

24 Plaintiff alleges that LVMPD has a formal unconstitutional policy to arrest citizens for  
 25 making "loud and tumultuous noises" in violation of "airport rules". (# 34). The question  
 26



1 before the Court is whether Clark County Code 20.04.070(a) is unconstitutional, and if so,  
2 whether LVMPD has a formal policy or custom to arrest citizens under this municipal law.  
3 However, the Plaintiff fails to provide any substantial evidence of a formal practice or policy  
4 condoning a practice to violate the constitutional rights of citizens.

5 For this reason, the Court grants summary judgment for the Defendants on the 42  
6 U.S.C. § 1983 claim for municipal liability.

7 B. Negligent Hiring, Retention, Training & Supervision

8 The Plaintiff alleges negligent hiring, training, retention, and supervision against the  
9 Defendant, LVMPD.

10 Nevada law provides discretionary immunity for negligence claims regarding hiring,  
11 retention, training, and supervision. *Martinez v. Maruszczak*, 123 Nev. 433, 168 P.3d 720  
12 (2007); *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 168 P.3d 1055 (2007) (adopting the  
13 federal standard for discretionary immunity in *Berkovitz v. United States*, 486 U.S. 531  
14 (1988)).

15 LVMPD's hiring and training practices are discretionary functions. In reviewing the  
16 submitted materials regarding said practices, the Court finds no indication of negligence,  
17 and the Plaintiff does not provide any evidence to indicate negligence on behalf of  
18 LVMPD's hiring, retention, training, and supervision policies. (Ex. I).

19 Therefore, the Court grants summary judgment for the Defendants on the negligent  
20 hiring, retention, training, and supervision claim.

21 C. Respondeat Superior

22 Due to the immunity provided Officer Oliver in the commission of his duties, the  
23 Court finds that LVMPD cannot be held liable for causes of action that hold no merit. For  
24 this reason, the Court grants summary judgment for the Defendants on the *respondeat*  
25 *superior* claim.


26 Accordingly,

1 THE COURT **ORDERS** that the Defendants' Motion for Summary Judgment (##23,  
2 29) is GRANTED;

3 THE COURT FURTHER **ORDERS** that the Plaintiff's Motion for Partial Summary  
4 Judgment (#34) is DENIED.

5 THE COURT FURTHER **ORDERS** that the Plaintiff's Requests for Additional Time  
6 (## 48, 49) are DENIED as moot.

7  
8 DATED this 12 day of September, 2014.

  
Lloyd D. George  
United States District Judge